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PATENT DEPARTMENT
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
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NEW YORK, NY 10036

EXAMINER

JOSEPH, TONYA S

ART UNIT	PAPER NUMBER
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3628

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10/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/799,480	RYBAKOWSKI ET AL.	
	Examiner	Art Unit	
	Tonya Joseph	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Status of Claims

Claims 1, 3, 7, 11-15, 20 and 24 have been amended. Claim 2 has been cancelled. No claims have been added. Thus, claims 1 and 3-28 remain pending and are again presented for Examination.

Response to Arguments

1. Applicant's arguments with respect to claims 1 and 2-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebl et al; U.S. Patent No. 5,289,362 in further in view of Hicks U.S. Patent No. 4,261,037.
4. As per Claim 1, Liebl teaches **(a) measuring utility usage of the entity during a time interval** (see Col. 9 lines 26-28 and 42-51); **(b) obtaining unit utility price for said entity, the pricing information established during said time interval** (see Col. 9 lines 28-32 and Col. 4 lines 44-60); **(c) establishing a utility cost for said time interval where the cost is the product of said unit utility price and said utility**

Art Unit: 3628

usage (see Col. 62 lines 1-9); *(d) repeating steps a-c for a plurality of time intervals* (see Col. 9 lines 24-30 and Col. 62). Liebl does not explicitly teach the limitations taught by Hicks *(f) automatically adjusting utility consumption of the entity if the cumulative total utility cost exceeds a first threshold value of the entity* (see Col. 3 lines 27-36 and Col. 6 lines 62-67) and *(g) automatically transmitting an alert signal if the utility cost in at least one said time interval reaches a second threshold value* (see Col. 3 lines 9-12). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Liebl to include the teachings of Hicks in order to aid a user in controlling the costs of their electricity bills.

5. As per Claim 3, Liebl in view of Hicks teach the method of claim 1 as described above. Liebl further teaches synchronizing, with a reference clock, a first clock that provides timing for the measurement of utility usage during a specific time interval (see Col. 26 lines 55-68) and the collection of utility price data for the same time interval (see Col. 3 lines 43-45; 52-53 and 56-64); the limitation “and determining that the time interval for the utility price directly corresponds, in time and duration, to the time interval for the measured utility usage” is merely a statement of intended result and is only afforded patentable weight in as much as it distinguishes the natural result of the synchronizing step. Because the result, of the synchronizing step taught by Liebl is capable of reaching this result, it meets the limitations of the claim.

6. As per Claim 4, Liebl in view of Hicks teach the method of claim 1 as described above. Liebl further teaches, verifying the utility usage is from a known measuring device (see Col. 9 lines 24-32, Examiner is interpreting the meter as a known device).

7. As per Claim 5, Liebl in view of Hicks teach the method of claim 3 as described above. Liebl further teaches, verifying the utility usage is free of communication errors (see Col. 10 lines 1-4; Col. 70 lines 19-44; Col. 71 lines 29-55 and Col. 72 lines 39-52).

8. As per Claim 6, Liebl in view of Hicks teach the method of claim 3 as described above. Liebl further teaches, automatically adjusting the utility consumption if the running total or cost for a specific time interval reaches a threshold cost value (see Col. 2 lines 33-48).

9. As per Claim 7, Liebl in view of Hicks teach the method of claim 1 as described above. Liebl does not explicitly teach the limitation taught by Hicks, wherein said step of automatically adjusting utility consumption is selected from the group of dimming lights, adjusting a thermostat of a cooling system, adjusting a thermostat of a heating system, and adjusting water flow (see Col. 2 lines 37-40 and Col. 3 lines 13-16). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Liebl to include the teachings of Hicks in order to control utility usage.

10. As per Claim 8, Liebl in view of Hicks teach the method of claim 1 as described above. Liebl further teaches, wherein the time interval for measuring utility usage is less than, equal to, or greater than five minutes (see Col. 9 lines 48-51).

11. As per Claim 9, Liebl in view of Hicks teach the method of claim 1 as described above. Liebl further teaches, wherein the time interval for measuring the utility price is less than, equal to, or greater than five minutes (see Col. 9 lines 38-51).

Art Unit: 3628

12. As per Claim 10, Liebl in view of Hicks teach the method of claim 1 as described above. Liebl further teaches, providing an interface for an operator of the entity to define parameters that affect the managing of the utility usage and cost (see Col. 14 lines 33-68).

13. As per Claim 11, Liebl in view of Hicks teach the method of claim 10 as described above. Liebl further teaches, wherein the parameters include the frequency of measuring the utility usage and establishing the running cost (see Col. 9 lines 48-51 and Col. 17 lines 21-39).

14. As per Claim 12, Liebl in view of Hicks teach the method of claim 10 as described above. Liebl further teaches, The limitation wherein the parameters include threshold load, electricity price, power factor, temperature, time period is only found to be non-functional descriptive material and are not functionally involved in any of the dependent steps recited. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404, (Fed. Cir. 1983); *In re Lowry*, 32 F. 3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of invention to use any type of parameters for utility use determination.

15. Claims 13, 15-16, 20-22, 24 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebl et al; U.S. Patent No. 5,289,362 in view of Hicks U.S. Patent No. 4,261,037 in further view of Crichlow U.S. Pre-Grant Publication No. 2002/0018545.

Art Unit: 3628

16. As per Claim 13, Liebl teaches a system which, obtains unit utility pricing information which the independent market operator establishes for defined time intervals (see Col. 9 lines 28-32 and Col. 4 lines 44-60); correlates each time interval for the utility usage data with a corresponding time intervals for the utility price data (see Col. 4 lines 53-60); establishes a utility cost for each time interval based on the utility usage measured during the interval and the utility price during the same interval (see Col. 17 lines 21-39 and Col. 4 lines 53-60); establishes a running total of the utility cost based on the utility cost measured over a defined number of time intervals (see Col. 17 lines 21-26); and automatically adjusts utility consumption of the entity based on the running total (see Col. 4 lines 61-68 and Col. 5 line 1); Liebl does not explicitly teach automatically transmitting an alert signal if the utility cost in at least one said time interval reaches a second threshold value (see Col. 3 lines 9-12). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Liebl to include the teachings of Hicks in order to aid a user in controlling the costs of their electricity bills. Liebl does not explicitly teach these operations being performed by a server, coupled to the plurality of the meter profilers via a communication device and coupled to an independent market operator. Crichlow teaches, when the meter is offline or power is out there is a special outage signal code from the PC device sent over the computer modem to the main server. The system for reading a meter 30 of the present invention is illustrated in FIG. 2. This figure illustrates the flow of data from a meter reading module 32 which reads data from a meter 34 to servers 48 of the energy company 36 while FIG. 4 illustrates the flow of data from the

meter reading device 32 reading data from meters 34 to the servers 48 as well as the flow from the servers 48 back to a personal computer 40 of the user (see para. 36 lines 5-7; para. 93 lines 1-7 and Figs. 2 and 4). Liebl does not explicitly teach a plurality of meter profilers which obtain utility usage of the entity measured during a defined time interval Crichlow further teaches FIG. 5 illustrates the use of the system for reading a meter 30 of the present invention for use in collecting data from a plurality of meters 34 within a large building having numerous residences. In this instance the meters 34 are connected to a gang box 64 wherein each meter 34 provides data to the PC 40 via a connection line 38. The gang box 64 includes a plurality of meter reading devices 32, each connecting to a respective meter 34. The computer is able to differentiate data from each meter reading module 32 within the gang box 64 and thus also differentiate data from each meter 34. This data is transmitted to the servers of the energy company 36 upon demand (see para. 97 lines 1-11 and para. 115). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Liebl and Hicks to include the system of Crichlow in order to provide energy companies with usage data and to permit the collection of usage data from building containing multiple residences, as taught in Crichlow para. 93 lines 1-8 and para. 97 lines 1-4).

17. As per Claim 15, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 13 as described above. Liebl further teaches each of said meter profilers includes a clock, the server further synchronizes each said clock in the plurality of the meter profilers with a clock signal. The limitation "common reference

(e.g., national standard)” is considered non-functional descriptive material and as such is afforded little patentable weight (see Col. 26 lines 55-68; Col. 3 lines 43-45 and 52-53).

18. As per Claim 16, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 15 as described above. Liebl further teaches wherein the time interval for the utility usage is coincident with the time interval for the utility price (see Col. 9 lines 28-32 and Col. 4 lines 44-60).

19. As per Claim 20, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 13 as described above. Liebl does not explicitly teach the limitation taught by Hicks, wherein said step of automatically adjusting utility consumption is selected from the group of dimming lights, adjusting a thermostat of a cooling system, adjusting a thermostat of a heating system, and adjusting water flow (see Col. 2 lines 37-40 and Col. 3 lines 13-16). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Liebl to include the teachings of Hicks in order to control utility usage.

20. As per Claim 21, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 13 as described above. Liebl further teaches, wherein the time interval for measuring utility usage is less than, equal to, or greater than five minutes (see Col. 9 lines 48-51).

21. As per Claim 22, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 13 as described above. Liebl further teaches, wherein the time interval

for measuring the utility price is less than, equal to, or greater than five minutes (see Col. 9 lines 38-51).

22. As per Claim 24, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 22 as described above. Liebl further teaches, an interface for an operator associated to define parameters that affect the managing of the utility usage and cost (see Col. 1 lines 34-47; Col. 3 lines 13-15; and Col. 10 lines 15-67), wherein the parameters include the frequency for the plurality of the meter profilers to obtain the utility usage (see Col. 9 lines 26-28 and 48-51).

23. As per Claim 28, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 24 as described above. Liebl further teaches, wherein the parameters include a threshold cost value (see Col. 4 lines 54-60).

24. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liebl et al; U.S. Patent No. 5,289,362 in view of Hicks U.S. Patent No. 4,261,037 in further view of Crichlow U.S. Pre-Grant Publication No. 2002/0018545 and Official Notice.

25. As per Claim 14; Liebl in view of Hicks in further view of Crichlow teaches the system of claim 13 as described above. Liebl does not explicitly teach, wherein the server automatically adjusts utility consumption of the entity based on cost in a particular time interval. Official Notice is taken that a server affecting utility consumption of the entity based on cost in a particular time interval is old and well known in the art of account management. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Liebl, Hicks and Crichlow in order to stay within the limits of a customer threshold value.

26. Claims 17-19, 23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebl et al; U.S. Patent No. 5,289,362 in view of Hicks U.S. Patent No. 4,261,037 in further view of Crichlow U.S. Pre-Grant Publication No. 2002/0018545 and Hosting (Reference U of the attached PTO-892).

27. As per Claim 17, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 15 as described above. Liebl further teaches a system which verifies that the utility usage is from the plurality of the meter profilers (see Col. 9 lines 24-32). Liebl does not explicitly teach the use of a server. Hosting teaches, the connection between client and server is normally by means of message passing, often over a network, and uses some protocol to encode the client's requests and the server's response (see para. 1). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the system of Liebl, Hicks and Crichlow to include the use of a server in order to allow for the passing of requests over a network, as taught in Hosting para. 1 lines 1-4.

28. As per Claim 18, Liebl in view of Hicks in further view of Crichlow and Hosting teaches the system of claim 17 as described above. Liebl further teaches a system which, verifies that the utility usage is free of communication errors (see Col. 10 lines 1-4; Col. 70 lines 19-44; Col. 71 lines 29-55 and Col. 72 lines 39-52). Liebl does not explicitly teach the use of a server. Hosting teaches, the connection between client and server is normally by means of message passing, often over a network, and uses some protocol to encode the client's requests and the server's response (see para. 1). It would have been prima facie obvious to one of ordinary skill in the art at the time of

invention to modify the system of Liebl, Hicks and Crichlow to include the use of a server in order to allow for the passing of requests over a network, as taught in Hosting para. 1 lines 1-4.

29. As per Claim 19, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 13 as described above. Liebl further teaches a system which, automatically adjusts the utility consumption if the running total reaches a threshold cost value or if the utility cost in a time interval reaches a threshold cost value (see Col. 2 lines 33-48). Liebl does not explicitly teach the use of a server. Hosting teaches, the connection between client and server is normally by means of message passing, often over a network, and uses some protocol to encode the client's requests and the server's response (see para. 1). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the system of Liebl, Hicks and Crichlow to include the use of a server in order to allow for the passing of requests over a network, as taught in Hosting para. 1 lines 1-4.

30. As per Claim 23, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 13 as described above. Liebl further teaches a system which, provides an interface for an operator of the entity to define parameters for the system to manage the utility cost (see Col. 14 lines 33-68). Liebl does not explicitly teach the use of a client server coupled to a server. Hosting teaches, the connection between client and server is normally by means of message passing, often over a network, and uses some protocol to encode the client's requests and the server's response (see para. 1). It would have been prima facie obvious to one of ordinary skill in the art at the time of

invention to modify the system of Liebl, Hicks and Crichlow to include the use of a server in order to allow for a computer to provide a service for another computer connected via a network, as taught in Hosting para. 2 lines 1-2.

31. As per Claim 25, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 24 as described above.. Liebl further teaches, the frequency to obtain the utility unit price information (see Col. 9 lines 28-32 and Col. 4 lines 44-60). Liebl does not explicitly teach the use of a server. Hosting teaches, the connection between client and server is normally by means of message passing, often over a network, and uses some protocol to encode the client's requests and the server's response (see para. 1). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the system of Liebl, Hicks and Crichlow to include the use of a server in order to allow for a computer to provide a service for another computer connected via a network, as taught in Hosting para. 2 lines 1-2.

32. As per Claim 26, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 24 as described above.. Liebl further teaches the frequency to establish the running total (see Col. 17 lines 21-26) Liebl does not explicitly teach the use of a server. Hosting teaches, the connection between client and server is normally by means of message passing, often over a network, and uses some protocol to encode the client's requests and the server's response (see para. 1). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the system of Liebl, Hicks and Crichlow to include the use of a server in order to allow for a

computer to provide a service for another computer connected via a network, as taught in Hosting para. 2 lines 1-2.

33. As per Claim 27, Liebl in view of Hicks in further view of Crichlow teaches the system of claim 24 as described above.. Liebl further teaches the frequency to establish the cost for each interval (see Col. 2 lines 49-53). Liebl does not explicitly teach the use of a server. Hosting teaches, the connection between client and server is normally by means of message passing, often over a network, and uses some protocol to encode the client's requests and the server's response (see para. 1). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the system of Liebl, Hicks and Crichlow to include the use of a server in order to allow for a computer to provide a service for another computer connected via a network, as taught in Hosting para. 2 lines 1-2.

Conclusion

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

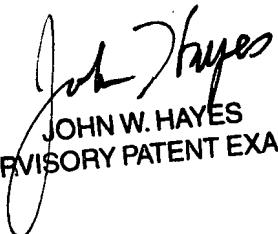
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonya Joseph whose telephone number is 571-270-1361. The examiner can normally be reached on Mon-Fri 7:30am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

Tonya Joseph
Examiner
Art Unit 3628